

CHAPTER THREE

CONFORMITY TO THE SENTENCING GUIDELINES

The analysis of conformity to the sentencing guidelines involves the comparison of the actual sentence imposed to the sentence identified under the Sentencing Guidelines Act. A sentence is considered to conform to the guidelines if it falls within the range of sentence lengths for a guideline grid box at a specific designated severity level and criminal history category. A sentence that falls at the mid-point of a relative grid box is regarded as standard. A sentence that falls at either the upper end or lower end of the relative grid box is considered as an aggravated or mitigated sentence, respectively. All other sentence lengths imposed are considered to be a departure from the guidelines unless the grid box is a designated border box. A sentence length above the aggravated level is defined as "departure upward" and a sentence length less than the mitigated level is defined as "departure downward."

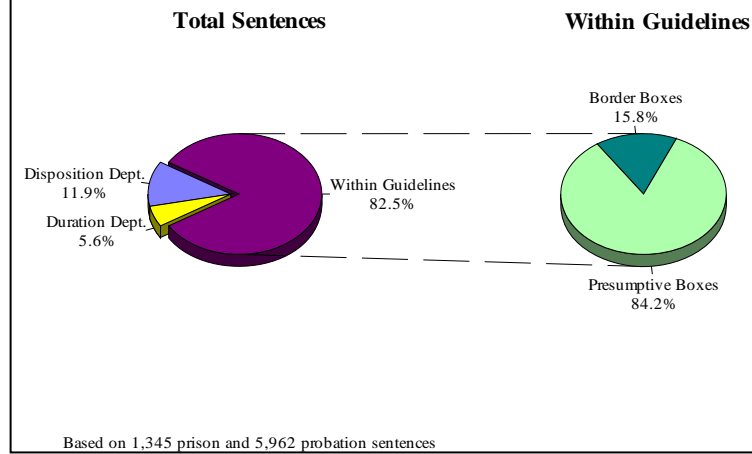
Departures from the designated guideline sentence can be further categorized into two types: dispositional departures and durational departures. A dispositional departure occurs when the guidelines recommend a period of incarceration or probation but the reverse type of sentence is imposed. For example, the grid box indicates a period of incarceration, but a probation sentence is imposed. Sentences imposed in "border boxes" or violations resulting from a probation sentence are not considered departures. A durational departure occurs when a sentence is pronounced but the imposed length of incarceration is either greater or less than the

number of months designated by the guidelines. Only pure guideline sentences were utilized for this specific analysis. A pure guideline sentence is defined as a guideline sentence that is not imposed to run concurrent or consecutive with a "pre-guideline" sentence. In addition, the analysis is based on computed variables regarding departures and the consecutive sentences are excluded from this analysis.

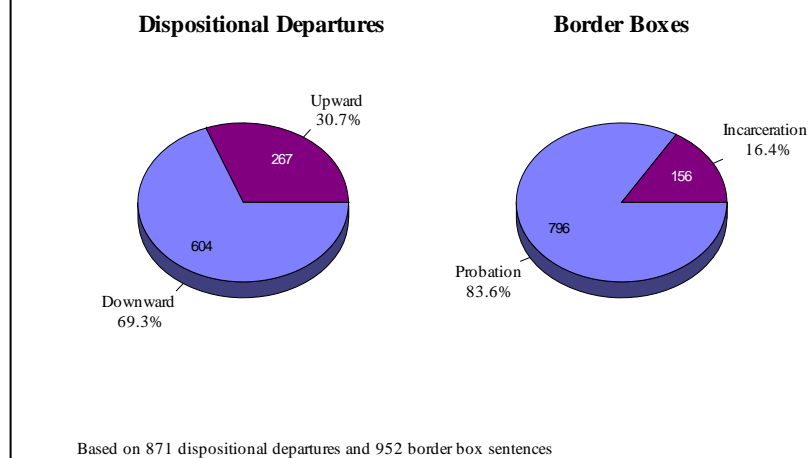
OVERALL CONFORMITY RATES

In FY 2005, a total number of 7,307 pure guideline sentences were utilized for this analysis, including 1,345 incarceration guideline sentences and 5,962 probation sentences. Figure 35 demonstrates that 82.5% of the 7,307 guideline sentences fell within the presumptive guideline grids; 5.6% indicated durational departures, and 11.9% were dispositional departures. Of all the sentences within the presumptive guideline grids, 5,077 sentences (84.2%) fell within either the presumptive prison boxes or presumptive probation boxes, while 952 sentences (15.8%) were located on designated border boxes. Figure 36 indicates that 69.3% (604 sentences) of the 871 dispositional departures were downward departures and 30.7% (267 sentences) were upward dispositional departures. Approximately 84% of the 952 border box sentences resulted in probation sentences with only 16% of this group sentenced to prison. The analysis of durational departure sentences is only applicable to presumptive prison sentences.

**Figure 35: Distribution of FY 2005
Overall Guideline Sentences**



**Figure 36: Distribution of Dispositional Departure
and Border Box Sentences**

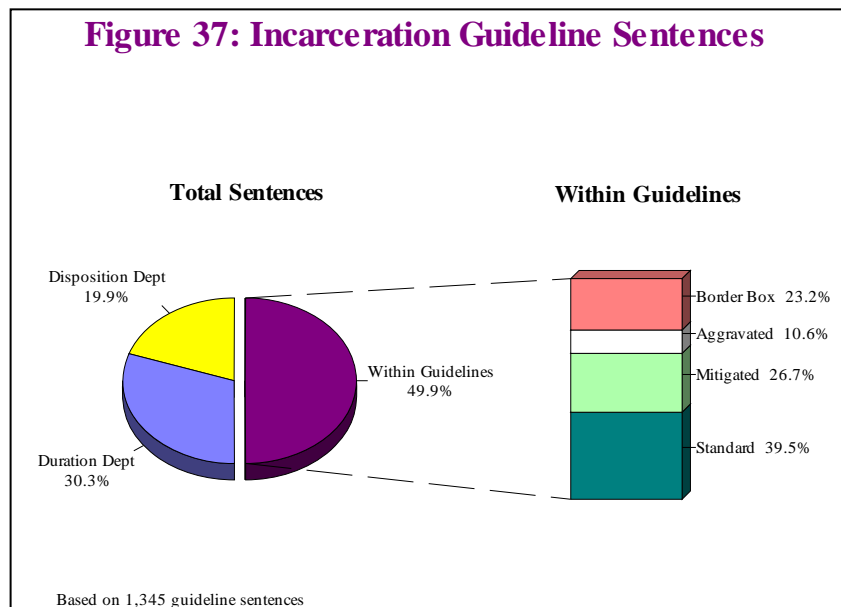


CONFORMITY OF PRESUMPTIVE PRISON GUIDELINE SENTENCES

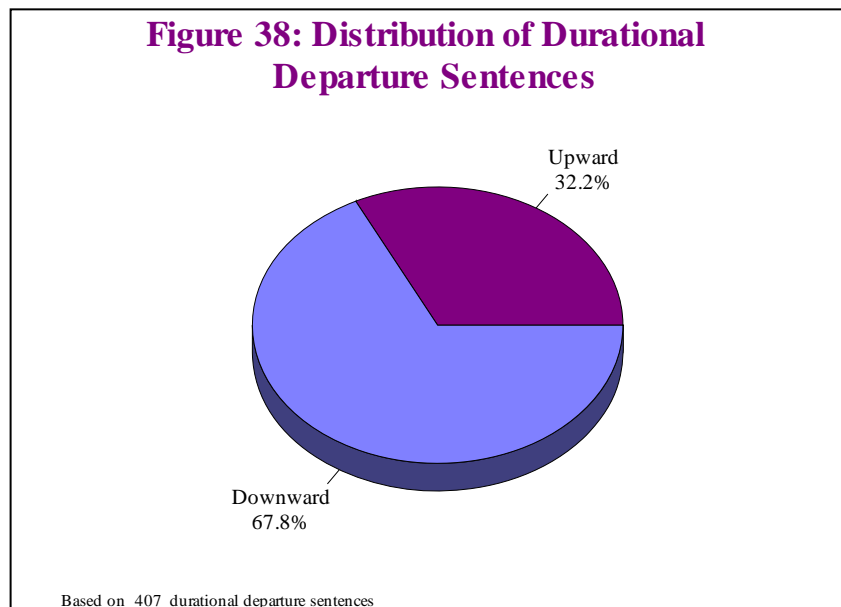
Sentences that are designated above the incarceration line of the sentencing grids are presumptive prison guideline sentences.

Revocations of probation conditions, either with or without new sentences, which result in prison sentences were excluded from this analysis. A total of 1,345 presumptive prison guideline sentences of FY 2005 were analyzed for this purpose.

Almost 50% of total sentences fell within the presumptive incarceration range. Of these sentences within the Guidelines, 39.5% fell within the standard range, 10.6% were within the aggravated range, and 26.7% were within the mitigated range. More than 23% were located within designated border boxes (Figure 37).



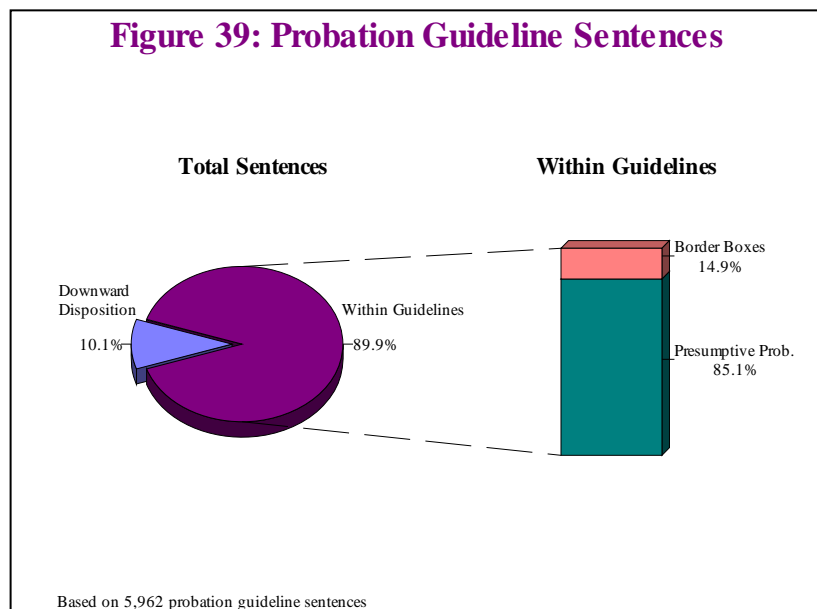
Among the durational departure sentences, 67.8% departed downward from the sentence lengths indicated on the presumptive range, while 32.2% departed upward from the presumptive guideline ranges. The percentage change of the upward durational departure sentences is a 6.1% increase over that in FY 2004 (Figure 38).



CONFORMITY OF PRESUMPTIVE PROBATION GUIDELINE SENTENCES

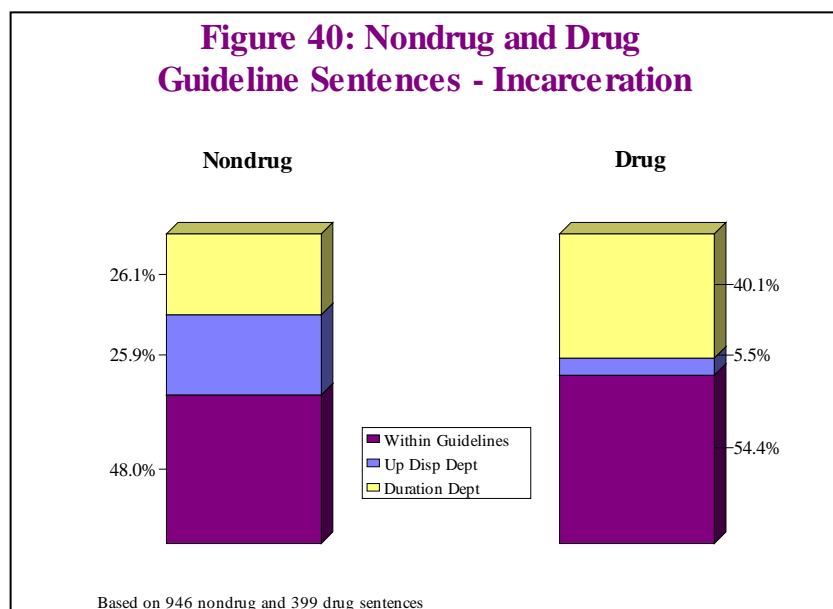
Presumptive probation guideline sentences refer to the sentences that are designated below the incarceration line of the sentencing grids. The analysis of probation guideline sentences demonstrates that as expected, the majority of probation guideline sentences (89.9% or 5,358 cases) fell within presumptive guideline range, among which 85% fell within presumptive probation grids and 15% were within border

boxes (Figure 39). The sentences within presumptive guideline range (5,358) accounted for 70% of the total probation sentences in FY 2005 (7,776), which is the same percentage rate as that of FY 2004. Further analysis of the dispositional departures indicates that probation sentences reflected downward dispositional departures of 10.1% (Figure 39), which increased by 0.4% compared to the percentage rate of FY 2004 (9.7%). Upward dispositional departure sentences were reflected in presumptive incarceration sentences (See Figure 37).

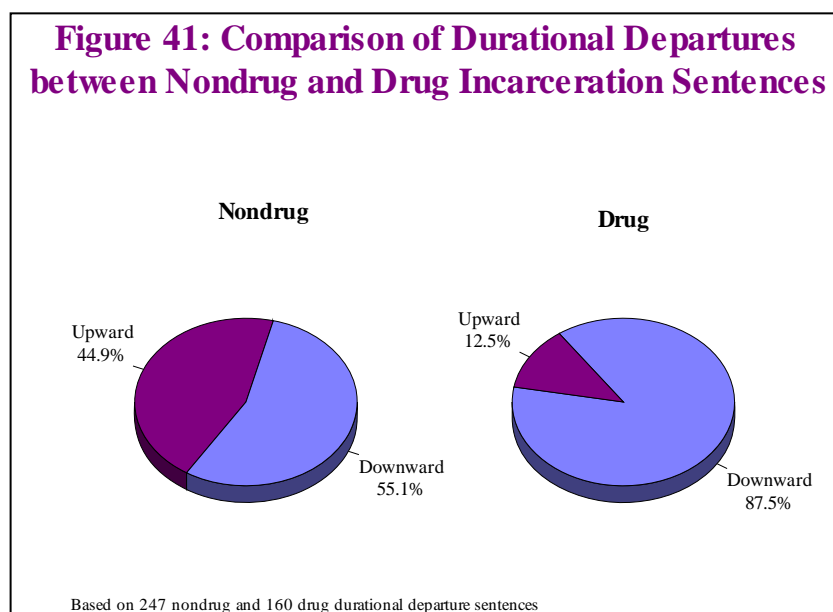


CONFORMITY OF NONDRUG AND DRUG GUIDELINE SENTENCES

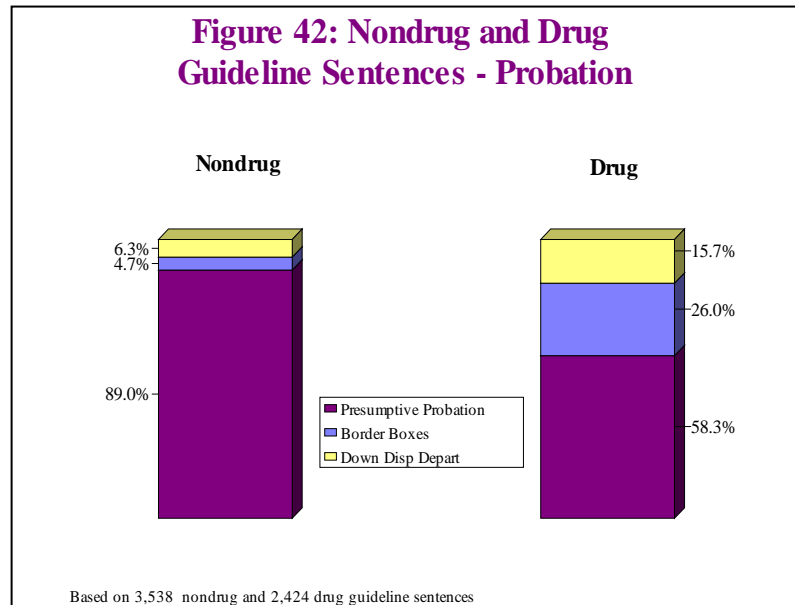
The comparative analysis of guideline incarceration sentences in terms of nondrug and drug sentences indicates that almost 26% of nondrug offenders showed upward dispositional departures, while drug offenders only revealed 5.5% upward dispositional departures. Besides, nondrug offenders represented 26% durational departures while drug offenders showed 40% durational departures (Figure 40).



When reviewing the durational departures, the data shows that downward departures represented 87.5% of the total durational departures on the drug grid. However, on the nondrug grid, only 55.1% of durational departures were downward (in Figure 41). The majority of the upward departures were found on severity levels 1, 2, 3 and 4 of the nondrug grid, which include the most serious person offenses (Table 24).



Examination of probation sentences reveals that significant differences were also identified between nondrug and drug grids. Drug sentences represented a higher percentage of downward dispositional departures than nondrug sentences (15.7% vs. 6.3%). The rate of drug probation sentences resulting from border boxes was much higher than that of nondrug probation sentences (26% vs. 4.7%, Figure 42).



The sentencing trend in Kansas seems to indicate that there is a tendency to depart downward more often with drug sentences than with nondrug sentences. The sentencing trend also indicates that drug offenders tend to be sentenced to probation sentences more frequently than do nondrug offenders when their offense types and criminal history categories fall within the border boxes (Figure 42).

CONFORMITY RATES TO THE GUIDELINES BY SEVERITY LEVEL

In addition to the drug or nondrug offense classifications, conformity rates vary depending on severity levels. The conformity rates of incarceration sentences by severity level are presented in Table 24. Drug incarceration sentences, as a whole, indicated a 13.8% standard, 2% aggravated,

10.3% mitigated and 28.3% border box sentence distribution. Nondrug sentences revealed a 19.7% standard, 5.3% aggravated, 13.3% mitigated and 11.6% border box sentence distribution. As for the departure sentences, drug sentences showed 5% upward durational departures and 35.1% downward durational departures, whereas nondrug sentences showed a 11.7% upward durational departure rate and a 14.4% downward durational departure rate. When examining dispositional departures, 25.9% of nondrug incarceration sentences were upward dispositional departures. By contrast, only 5.5% of drug incarceration sentences were upward dispositional departures. This would imply that judges are more likely to impose fewer upward dispositional sentences for drug offenders than for nondrug offenders. This finding has been supported by data over the past ten years.

Table 24: Conformity Rates by Severity Level - Incarceration Sentences

Severity Level	N	Within Guidelines (%)				Departures (%)		
		Agg.	Standard	Mit.	Box	Durational		Dispositional
						Upward	Downward	Upward
D1	79	1.3	2.5	2.5		1.3	92.4	
D2	20	5.0	25.0	15.0		10.0	45.0	
D3	144	2.1	13.9	6.9	57.6	2.1	17.4	
D4	156	1.9	17.9	16.7	19.2	9.0	21.2	14.1
Subtotal	399	2.0	13.8	10.3	28.3	5.0	35.1	5.5
N1	50	10.0	34.0	12.0		20.0	24.0	
N2	24	20.8	33.3	8.3		16.7	20.8	
N3	165	8.5	24.8	22.4		23.6	20.6	
N4	48	10.4	29.2	18.8		31.3	10.4	
N5	170	7.1	16.5	14.7	24.1	9.4	28.2	
N6	28	3.6	25.0	10.7	7.1	7.1	21.4	25.0
N7	172	4.1	17.4	13.4		10.5	4.1	50.6
N8	80	3.8	21.3	13.8		2.5	11.3	47.5
N9	155	5.2	23.9	11.0		3.2	4.5	52.3
N10	54	5.6	20.4	9.3			5.6	59.3
Subtotal	946	6.7	22.2	14.6	4.5	11.7	14.4	25.9
TOTAL	1,345	5.3	19.7	13.3	11.6	9.7	20.5	19.9

Table 25 displays the conformity rates of probation sentences by severity levels. Probation drug sentences indicated 15.7% downward dispositional departures, which should have been presumptive incarceration, while only 6.3% of nondrug sentences experienced downward dispositional departures. The significant differences also occurred within the border box grids. Drug offenders received more probation sentences

than nondrug offenders did when their severity levels and criminal history categories fell within the border boxes (26% versus 4.7%). Comparison of probation drug and nondrug sentences reveals the same trend as indicated with incarceration sentences: the tendency is to impose more non-prison sentences for drug offenders than for nondrug offenders. This trend has been consistent for the past ten years.

Table 25: Conformity Rates by Severity Level - Probation Sentences

Severity Level	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	109			100.0
D2	18			100.0
D3	601		93.2	6.8
D4	1,696	83.3	4.1	12.6
Subtotal	2,424	58.3	26.0	15.7
N1	4			100.0
N2	0			N/A
N3	43			100.0
N4	4			100.0
N5	208		75.5	24.5
N6	58	79.3	15.5	5.2
N7	927	96.7		3.3
N8	613	96.1		3.9
N9	1,284	96.2		3.8
N10	397	96.5		3.5
Subtotal	3,538	89.0	4.7	6.3
TOTAL	5,962	76.5	13.4	10.1

CONFORMITY RATES TO THE GUIDELINES BY RACE

The conformity rates to sentencing guidelines by race were analyzed respectively in Tables 26 and 27 for the drug and nondrug offenders admitted to prison in FY 2005. The examination of drug incarceration sentences within guidelines indicates that blacks received more standard sentences (23.7% vs. 10.9%), aggravated sentences (3.2% vs. 1.6%) and mitigated sentences (15.1% vs. 8.9%) than whites. However black offenders represented a lower percentage in border box sentences than white offenders (20.4% vs. 30.3%). When reviewing sentence departures, whites indicated a much higher percentage in downward durational departures (38.2% vs. 25.8%) and a lower percentage in upward

durational departures (4.3% vs. 7.5%) than blacks, while black offenders received fewer upward dispositional departures than white offenders (4.3% vs. 5.9%, Table 26).

No significant percentage differences were identified between white and black nondrug offenders in aggravated sentences, standard sentences and upward durational departures. Nevertheless, the conformity rates varied in mitigated, border box and departure sentences. Blacks received more mitigated sentences (16.9% vs. 13.7%) and downward durational departures (20.9% vs. 11%) than whites, whereas whites represented higher percentages in border box sentences (5.1% vs. 2.7%) and upward dispositional departures (29.2% vs. 19.9) than blacks (Table 27).

Table 26: Conformity Rates by Race - Incarceration Sentences Drug Offenders

Severity Level	Race	N	Within Guidelines (%)				Departures (%)		
			Agg.	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	
D1	White	77	1.3	2.6	2.6		1.3	92.2	
	Black	2						100.0	
	Other	0							
D2	White	12		16.7	16.7		8.3	58.3	
	Black	8	12.5	37.5	12.5		12.5	25.0	
	Other	0							
D3	White	110	2.7	12.7	6.4	62.7	2.7	12.7	
	Black	33		18.2	9.1	39.4		33.3	
	Other	1				100.0			
D4	White	105	1.0	14.3	15.2	21.9	7.6	22.9	17.1
	Black	50	4.0	26.0	20.0	12.0	12.0	18.0	8.0
	Other	1				100.0			
Total	White	304	1.6	10.9	8.9	30.3	4.3	38.2	5.9
	Black	93	3.2	23.7	15.1	20.4	7.5	25.8	4.3
	Other	2				100.0			

Note: Based on 399 drug incarceration guideline sentences reporting race of offenders.

**Table 27: Conformity Rates by Race - Incarceration Sentences
Nondrug Offenders**

Severity Level	Race	N	Within Guidelines (%)				Departures (%)		
			Agg.	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	Upward
N1	White	34	11.8	35.3	17.6		11.8	23.5	
	Black	16	6.3	31.3			37.5	25.0	
	Other	0							
N2	White	18	22.2	33.3	11.1		22.2	11.1	
	Black	5	20.0	40.0				40.0	
	Other	1						100.0	
N3	White	115	9.6	27.8	20.9		26.1	15.7	
	Black	48	6.3	18.8	27.1		16.7	31.3	
	Other	2					50.0	50.0	
N4	White	35	5.7	31.4	20.0		31.4	11.4	
	Black	9	11.1	33.3	22.2		22.2	11.1	
	Other	4	50.0				50.0		
N5	White	92	8.7	16.3	14.1	33.7	7.6	19.6	
	Black	72	4.2	18.1	15.3	11.1	12.5	38.9	
	Other	6	16.7		16.7	33.3		33.3	
N6	White	19		21.1	10.5	5.3	10.5	21.1	31.6
	Black	7	14.3	42.9	14.3			28.6	
	Other	2				50.0			50.0
N7	White	119	1.7	19.3	13.4		8.4	3.4	53.8
	Black	52	9.6	13.5	13.5		13.5	5.8	44.2
	Other	1					100.0		
N8	White	51	3.9	17.6	7.8		3.9	9.8	56.9
	Black	28	3.6	28.6	25.0			14.3	28.6
	Other	1							100.0
N9	White	109	4.6	24.8	8.3		4.6	3.7	54.1
	Black	44	4.5	22.7	18.2			4.5	50.0
	Other	2	50.0				50.0		
N10	White	38	5.3	13.2	7.9			5.3	68.4
	Black	15	6.7	40.0	6.7			6.7	40.0
	Other	1			100.0				50.0
Total	White	630	6.3	22.9	13.7	5.1	11.9	11.0	29.2
	Black	296	6.4	22.3	16.9	2.7	10.8	20.9	19.9
	Other	20	20.0		10.0	15.0	20.0	25.0	10.0

Note: Based on 946 nondrug incarceration guideline sentences reporting race of offenders.

The conformity rates by race for offenders sentenced to probation during FY 2005 were presented in Tables 28 and 29. White offenders received more presumptive probation sentences (60.6% vs. 50.7%) than black offenders for drug offenses but black drug offenders indicated a higher rate in border box sentences (31.6% vs. 24.6%) and downward dispositional departures than white drug offenders (17.8% vs. 14.9%, Table 28). This sentence distribution for drug offenders did not fluctuate much in the past four years.

The analysis of the probation sentences of the nondrug offenders reveals that similar to the drug sentence pattern, white nondrug offenders received more presumptive probation sentences (90% vs. 84.9%) than black nondrug offenders, while black offenders represented higher percentage of downward dispositional departures (10.2% vs. 5.4%) than white offenders for nondrug offenses. No significant percentage difference was identified in border box sentences between white and black nondrug offenders (4.6% vs. 4.9%, Table 29).

**Table 28: Conformity Rates by Race - Probation Sentences
Drug Offenders**

Severity Level	Race	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	White	103			100.0
	Black	1			100.0
	Other	1			100.0
D2	White	12			100.0
	Black	6			100.0
	Other	0			
D3	White	450		94.4	5.6
	Black	137		89.1	10.9
	Other	10		90.0	10.0
D4	White	1,365	85.6	3.6	10.8
	Black	306	74.5	6.5	19.0
	Other	19	73.7	5.3	21.1
Total	White	1,930	60.6	24.6	14.9
	Black	450	50.7	31.6	17.8
	Other	30	46.7	33.3	20.0

Note: Based on 2,410 drug probation sentences reporting race of offenders.

**Table 29: Conformity Rates by Race - Probation Sentences
Nondrug Offenders**

Severity Level	Race	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
N1	White	3			100.0
	Black	1			100.0
N2	White	0			
	Black	0			
N3	White	32			100.0
	Black	11			100.0
N4	White	4			100.0
	Black	0			
N5	White	152		77.6	22.4
	Black	52		67.3	32.7
	Other	4		100.0	
N6	White	47	83.0	12.8	4.3
	Black	11	63.6	27.3	9.1
N7	White	737	97.6		2.4
	Black	171	93.0		7.0
	Other	16	93.8		6.2
N8	White	435	97.5		2.5
	Black	158	91.8		8.2
	Other	12	100.0		
N9	White	984	97.0		3.0
	Black	270	93.0		7.0
	Other	22	100.0		
N10	White	295	96.6		3.4
	Black	95	95.8		4.2
	Other	4	100.0		
Total	White	2,689	90.0	4.6	5.4
	Black	769	84.9	4.9	10.2
	Other	58	91.4	6.9	1.7

Note: Based on 3,516 nondrug probation sentences reporting race of offenders.

CONFORMITY RATES TO THE GUIDELINES BY GENDER

This section discusses the conformity rates to the sentencing guidelines between male and female offenders sentenced or admitted to prison in FY 2005. For the drug incarceration sentences, only males received aggravated sentences, which is consistent with data in the past four years. In addition, male drug offenders represented higher rates in standard sentences (14% vs. 11.4%) and mitigated sentences (11% vs. 2.9%). However, female drug offenders represented a higher rate in border box sentences (37.1% vs. 27.5%) and downward durational departures (40% vs. 34.6%) than their counterparts. Upward durational departures were only identified in male drug offenders, but female drug offenders received more

upward dispositional departures than male drug offenders (8.6% vs. 5.2%, Table 30).

The evaluation of the nondrug incarceration sentences shows that within guidelines, males represented higher percentages than females in aggravated sentences (7% vs. 1.8%), standard sentences (22.4% vs. 18.2%), mitigated sentences (14.9% vs. 9.1%) and border box sentences (4.6% vs. 3.8%), which are pretty consistent with the data observed in FY 2004. The analysis of departure sentences reveals that female nondrug offenders stood for the lower rates of durational departure sentences including both upward and downward durational departures than males. However, females represented a much higher percentage in upward dispositional departures than their counterparts (60% vs. 23.8%, Table 31).

**Table 30: Conformity Rates by Gender - Incarceration Sentences
Drug Offenders**

Severity Level	Gender	N	Within Guidelines (%)				Departures (%)		
			Agg	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	
D1	Male	69	1.4	2.9	2.9		1.4	91.3	
	Female	10						100.0	
D2	Male	16	6.3	25.0	18.8		12.5	37.5	
	Female	4			25.0			75.0	
D3	Male	136	2.2	14.0	7.4	55.9	2.2	18.4	
	Female	8		12.5		87.5			
D4	Male	143	2.1	18.2	17.5	16.8	9.8	22.4	13.3
	Female	13		15.4	7.7	46.2		7.7	23.1
Total	Male	364	2.2	14.0	11.0	27.5	5.5	34.6	5.2
	Female	35		11.4	2.9	37.1		40.0	8.6

Note: Based on 399 drug incarceration guideline sentences.

**Table 31: Conformity Rates by Gender - Incarceration Sentences
Nondrug Offenders**

Severity Level	Gender	N	Within Guidelines (%)				Departures (%)		
			Agg.	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	Upward
N1	Male	48	10.4	33.3	10.4		20.8	25.0	
	Female	2		50.0	50.0				
N2	Male	23	21.7	30.4	8.7		17.4	21.7	
	Female	1		100.0					
N3	Male	160	8.8	25.0	21.9		23.8	20.6	
	Female	5		20.0	40.0		20.0	20.0	
N4	Male	47	8.5	29.8	19.1		31.9	10.6	
	Female	1	100.0						
N5	Male	163	7.4	14.7	14.7	23.9	9.8	29.4	
	Female	7		57.1	14.3	28.6			
N6	Male	27	3.7	25.9	11.1	7.4	7.4	22.2	22.2
	Female	1							100.0
N7	Male	159	4.4	17.6	14.5		11.3	3.8	48.4
	Female	13		15.4				7.7	76.9
N8	Male	70	4.3	24.3	14.3		2.9	11.4	42.9
	Female	10			10.0			10.0	80.0
N9	Male	146	5.5	24.7	11.6		3.4	4.8	50.0
	Female	9		11.1					88.9
N10	Male	48	6.3	22.9	10.4			6.3	54.2
	Female	6							100.0
Total	Male	891	7.0	22.4	14.9	4.6	12.3	14.9	23.8
	Female	55	1.8	18.2	9.1	3.6	1.8	5.5	60.0

Note: Based on 946 nondrug incarceration guideline sentences.

The conformity rates of the probation sentences by gender are demonstrated in Tables 32 and 33. The analyses of the offenders on probation show that females on both drug and nondrug grids received less downward dispositional departures than males (10.2% vs. 17.2%, Table 32; 2.3% vs. 7.6%, Table 33). This finding indicates that except incarceration drug sentences in FY 2003, females were more likely to be incarcerated than males when both upward and downward dispositional departures are compared for incarceration and probation

sentences. Females had a higher likelihood of an upward dispositional departure to prison even when their offenses fell within the presumptive probation portion of the grid (Table 30 and Table 31). Females also had less chance for a downward departure to probation if their sentences fell within a presumptive prison box (Table 32 and 33). The above findings continue the trend that was present in the past nine years (Annual Reports of FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002 FY 2003 and FY 2004).

**Table 32: Conformity Rates by Gender - Probation Sentences
Drug Offenders**

Severity Level	Gender	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	Male	74			100.0
	Female	31			100.0
D2	Male	13			100.0
	Female	5			100.0
D3	Male	473		91.5	8.5
	Female	124		99.2	0.8
D4	Male	1,245	81.0	4.2	14.8
	Female	445	90.3	4.0	5.6
Total	Male	1,805	55.9	26.9	17.2
	Female	605	66.4	23.3	10.2

Note: Based on 2,410 drug probation sentences reporting gender of offenders.

**Table 33: Conformity Rates by Gender - Probation Sentences
Nondrug Offenders**

Severity Level	Gender	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
N1	Male	4			100.0
N2	Male	0			
N3	Male	40			100.0
	Female	3			100.0
N4	Male	4			100.0
	Female	0			100.0
N5	Male	181		74.0	26.0
	Female	27		85.2	14.8
N6	Male	52	80.8	15.4	3.8
	Female	6	66.7	16.7	16.7
N7	Male	775	96.3		3.7
	Female	149	98.7		1.3
N8	Male	337	94.1		5.9
	Female	268	98.5		1.5
N9	Male	997	95.6		4.4
	Female	279	98.2		1.8
N10	Male	309	95.5		4.5
	Female	85	100.0		
Total	Male	2,699	87.2	5.3	7.6
	Female	817	94.7	2.9	2.3

Note: Based on 3,516 nondrug probation sentences reporting gender of offenders.